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U.S. DEPARTMENT OF COMMERCE
PATENT AND TRADEMARK OFFICE

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Trademark Trial and Appeal Board

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In re Casio Keisanki Kabushiki Kaisha, dba Casio Computer Co., Ltd.

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Serial No. 74/608,858

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Arthur Schwartz of Foley & Lardner for Casio Keisanki Kabushiki Kaisha, dba Casio Computer Co., Ltd.

David Mermelstein, Trademark Examining Attorney, Law Office 103 (Michael A. Szoke, Acting Managing Attorney).

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Before Cissel, Hanak and Hairston, Administrative Trademark Judges.

Opinion by Hairston, Administrative Trademark Judge:

This is an appeal from the Trademark Examining Attorney's final refusal to register the mark MEGA VISION for goods which were subsequently identified as "liquid crystal television sets for domestic viewing purposes; video projectors; liquid crystal projectors; screens for video

projectors; loud speakers; amplifiers; television sets for domestic viewing purposes; [and] video cameras." [1]

Registration has been finally refused under Section 2(d) of the Trademark Act, 15 U.S.C. §1052(d), on the ground that applicant's mark, if used in connection with the identified television sets, would so resemble the registered mark MEGAVISION reproduced below,

for computer terminals as to be likely to cause confusion.[2]

Both applicant and the Examining Attorney have filed briefs, but an oral hearing was not requested.

With respect to the similarity of the marks, we note that applicant's brief is silent on this factor. We find that this amounts to a tacit concession that the marks are virtually identical, as the Examining Attorney maintains.

We turn our attention, as have applicant and the Examining Attorney, to the relationship between the goods.

[1] Serial No. 74/608,858 filed on December 9, 1994; which alleges a bona fide intention to use the mark in commerce.
[2] Registration No. 1,131,658 issued March 11, 1980; Sections 8 & 15 affidavit filed. While the registration also covers certain

Applicant, in urging reversal of the refusal to register, argues that televisions and computer terminals are different in nature; that these kinds of goods are not likely to be used together; that the "market segments" for computer terminals and televisions are separate and distinct; and that computer terminals and televisions are bought by careful purchasers.

The Examining Attorney, on the other hand, maintains that televisions and computer terminals are related products because there is a trend toward the interchangeability of televisions and computer monitors; that televisions and computers are increasingly being used together; and that these goods are often sold under the same mark by the same manufacturers.

As has been frequently stated, it is not necessary that the goods of the parties be similar or competitive, or even that they move in the same channels of trade to support a holding of likelihood of confusion. It is sufficient that the respective goods of the parties are related in some manner, and/or that the conditions and activities surrounding the marketing of the goods are such that they would or could be encountered by the same persons under circumstances that could, because of the similarity of the

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services, the Examining Attorney's refusal to register is based on a likelihood of confusion with computer terminals.

marks, give rise to the mistaken belief that they originate from the same producer. In re International Telephone & Telegraph Corp., 197 USPQ 910, 911 (TTAB 1978). Further, the Board has stated in the past that "[i]f the marks are the same or almost so, it is only necessary that there be a viable relationship between the goods or services in order to support a likelihood of confusion." In re Concordia International Forwarding Corp., 222 USPQ 355, 356 (TTAB 1983).

In the present case, we find that the Examining Attorney has submitted sufficient evidence to establish a viable relationship between televisions and computer terminals. In particular, he submitted a number of excerpts from the NEXIS data base which show the integration of computers and televisions.

The following are representative samples of these excerpts:

> . . . set can display 50 percent more colors than conventional tubes and double the contrast. It can be used as a television or computer monitor, said NEC.
> ("NEC Commercializes Plasma Display Panel," Newsbytes; February 27, 1997);
>
> . . . nearly everything a corporate presentation center might need to do. It functions as a 1,024-by-768 projection television/computer monitor and overhead projector, and it even replaces your computer to a limited degree.
> ("Great Price," Windows Sources; November 1996);
>
> One trend that IBM sees continuing, said

> Schafer, is the convergence of the television and computer monitor. ("More Shoppers Seeking 'Big Picture,'" Computer Retail Week; September 16, 1996);
>
> . . . idea that the Web could complement the television experience rather than compete with it. Instead of designing a product that lets people pretend their television is a computer monitor, they designed a product that lets people integrate Web surfing with watching television. ("Distributed Thinking;" InfoWorld; July 15, 1996);
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> Worldvision is a dark tube TV monitor from NetTV of San Rafael, Calif. A computer monitor and digital television with twice the resolution of conventional TVs, it comes in 29-in., 33-in. or 37-in. sizes. ("Television Tied To PC;" Data Storage Report; April 1, 1996); and
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> The $999 machine can be used as a television or a multimedia computer monitor. ("Computers and Automation," Investor's Business Daily; November 14, 1994).

Further, the Examining Attorney submitted copies of a number of third-party registrations to show that goods of the type involved herein may emanate from the same source under the same mark. A portion of this evidence is of limited value given the fact that some of the registrations are for house marks or are based under Section 44 of the Act with no claim of any use in this country. Nonetheless, the rest of the registrations tend to suggest that goods of the type involved in this appeal may emanate from a single

source under the same mark.[3] In re Mucky Duck Mustard Co. Inc., 6 USPQ2d 1467 (TTAB 1988).

Finally, while we recognize that televisions and computers are relatively expensive items, and purchasers may be expected to exercise a certain degree of care in making their selections, purchasers of these products are not immune to source confusion, especially in cases like the present one, where related goods would be marketed under virtually identical marks.

In view of the foregoing, we conclude that purchasers familiar with registrant's computer terminals sold under the mark MEGAVISION and design are likely to believe, upon encountering applicant's mark MEGA VISION for televisions, that the goods originated with or were somehow associated with the same source.

Applicant, as the newcomer, had a duty to select a mark which is not confusingly similar to a previously used or registered mark. To the extent that we have any doubt on the issue of likelihood of confusion, such doubt must be resolved in favor of the registrant. In re Pneumatiques

[3] For example, the mark COMPRESSED AUDIO and design is registered for TV receivers, TV projectors and computers; a mark consisting of a stylized letter "D" is registered for computers, computer monitors and televisions; the mark DAYTEK and design is registered for computers, computer monitors and televisions; and the mark SPORT CHIPS is registered for computers, computer keyboards, terminals and television sets.

Caoutchouc Manufacture et Plastiques Kleber-Colombes, 487 F.2d 918, 179 USPQ 729 (CCPA 1973).

**Decision**: The refusal to register under Section 2(d) of the Trademark Act is affirmed.[4]

R. F. Cissel

E. W. Hanak

P. T. Hairston
Administrative Trademark
Judges, Trademark Trial and
Appeal Board

[4] Applicant's request, in its reply brief, that the Board reverse the refusal to register with respect to those goods in its application for which the Examining Attorney offered no evidence or arguments on the issue of likelihood of confusion is not well taken, and is accordingly denied.